APPENDIX A

In the Supreme Court of Georgia

Decided: Sep 21, 1994

S94A0984. BOWLES V. ASKEW, ET AL.

Motion for Reconsideration Denied Oct. 6, 1994

SEARS-COLLINS, Justice.

Appellant John C. Bowles took but did not pass the July 1993 attorneys' examination for admission to the practice of law in Georgia. See Rules Governing Admission to the Practice of Law ["Rules"], Part C Section1. Bowles then petitioned the superior court for a writ of mandamus directing the Georgia Office of Bar Admissions to allow Bowles' representative to inspect the answers which were matched with his name as well as the answers of five other applicants who took the same examination, in order to determine whether Bowles actually submitted the answers which were matched to his name. Bowles contended that "such an inspection procedure would be the minimum required by the Due Process clauses of both the Georgia and Federal Constitutions." Bowles also sought a temporary restraining order to prevent the destruction of his answers pursuant to Part B Section of he Rules, which provides that an " applicant's answers [shall not] be retained beyond the commencement date of the succeeding examination."

After a hearing, the trial court denied Bowles' request for a temporary restraining order and dismissed the complaint for mandamus. The trial court found that the Board of Bar Examiners has the authority to deny Bowles access to the requested information under the Rules, and that "[i]n light of [Bowles'] unlimited opportunity to retake the bar examination, there is

no evidence of irreparable injury." On appeal, Bowles reasserts his contention that he has been unconstitutionally deprived of due process of law. For the following reasons, we affirm the trial court.

Part B Section of the Rules provides that "[t]he Director of Bar Admissions...shall not...allow inspection of either questions or answers following the giving of an examination." The due process ramifications of the lack of a procedure in Georgia's Rules for the review of a failed examination were considered in Tyler v. Vickery, 517 F2d (5th Cir. 1975).

That court balanced the applicant's "interest in avoiding the loss which lack of the procedure inflicts upon him against the interests which the government seeks to advance by denying it." Id. at 1104. The Tyler court recognized that "scores of applicants fail the Georgia bar examination each time it is given," id. at 1105, and that requiring review of every failing grade would be "an intolerable burden upon the bar examiners," id. (citation omitted). The court found that since there is no limit on the number of times an applicant may take the bar examination, "the 'liberty interest' a failing examinee has at stake [is] minor, . . . [while] the interests which the state seeks to advance by substituting reexamination for hearing for a hearing [are] substantial."

We find that even if there is a chance that Bowles' failing grade was based on examination answers other than his own, the likelihood that the same error would be repeated is minuscule, especially in light of the procedures and precautions in effect when the examination is administered and graded, see Parts B and C of the Rules[1]. As there remains no limit on the number of times an applicant may take the bar examination, we find that any liberty interest threatened by the trial court's dismissal of Bowles' complaint is outweighed by the state's interests advanced by the Rules and recognized in Tyler.

Therefore, we hold that the trial court did not err in dismissing Bowles' complaint.

Judgment affirmed. All the Justices concur.

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[1] Bowles has not alleged any impropriety in the procedure for the administration and grading of the examination; rather, his only allegation consists of speculation that his examination booklet may have been confused with someone else's.

APPENDIX B

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

JOHN C. BOWLES, Plaintiff	)	
VS.	)	CIVIL ACTION
	)	FILE NO:
HULETT H. ASKEW, Director of Admissions; OFFICE OF BAR ADMISSIONS; THE SUPREME COURT OF GEORGIA; and THE STATE OF GEORGIA,	)	E-23113
Defendants	)	

ORDER DENYING TEMPORARY RESTRAINING ORDER AND DISMISSING CASE

This matter came on for a hearing on plaintiff's emergency motion for temporary injunction on Thursday, February 10, 1994. Defendants had previously filed a motion to dismiss on January 5,1994. Based upon a review of the parties' briefs and oral arguments, the Court finds as follows:

1.

Under the Georgia Constitution, the Judicial branch of government, and specifically the Supreme Court, has exclusive authority to regulate the legal profession and membership in the State Bar. Ga Const. Art. 1, §2, ¶3. In Re Oliver , 261 Ga. 850 (1992).

2.

Based upon the rules promulgated by the Georgia supreme Court, pursuant to its authority to regulate the legal profession and admission thereto, the Board of Bar Examiners has the authority to establish procedures to administer and grade the bar examination.

3.

The Board of Bar Examiners has the Authority under its rules to deny plaintiff or plaintiff's representative access to an inspection of the Board's records, including but not limited to, plaintiff's answers to the bar examination. (Rules Governing Admission to the Practice of Law, Part B, Section 13.)

4.

In light of plaintiff's unlimited opportunity to retake the bar examination, there is no evidence of irreparable injury.

5.

Plaintiff's complaint does not state a basis for a course of action against the defendants.

Based upon these findings, the Court ORDERS that plaintiff's complaint be DISMISSED.

SO ORDERED, this 14th day of February, 1994.

/s/ DON A. LANGHAM, Judge
Superior Court of Fulton County

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APPENDIX C

IN THE SUPERIOR COURT OF FULTON

STATE OF GEORGIA

JOHN C. BOWLES, Plaintiff	)	CIVIL ACTION FILE No. E-23113
vs.	)	
HULETT H. ASKEW, Director of Admissions, et al.,	)	
Defendants	)	

ORDER DENYING PLAINTIFF'S MOTION TO AMEND JUDGMENT

Plaintiff filed an action against the "Director of Admissions, Office of Bar Admissions, and the Supreme Court of Georgia, and the State of Georgia." Plaintiff sought a temporary restraining order to seek independent examination of his bar examination documents and to require the Office of Bar Admissions to retain those documents.

A hearing was conducted. At the hearing, the defendants moved to dismiss the action. After hearing arguments, this Court denied the temporary restraining order and granted defendants' motion to dismiss.

Plaintiff now moves to amend the judgment to prohibit the defendants from destroying his bar examination answers.

That issue was considered by the Court at the hearing on the temporary restraining order. It will not be considered again.

The Plaintiff's motion to amend judgment is DENIED.

SO ORDERED, this 17th day of February, 1994.

/s/ DON A. LANGHAM, Judge
Superior Court of Fulton County

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